

Chapter 8 Summary: Rape and Other Sexual offences

Chapter 8 explores sexual offences in the Sexual Offences Act 2003 (SOA).

Non-consent based offences (Chapter 8.2-8.5)

Offences defined in sections 1- SOA are linked by the common requirement that V must lack consent to the sexual conduct, and D must lack reasonable belief in V's consent.

- Section 1: Rape – Non-consensual penile penetration;
- Section 2: Assault by penetration – Non-consensual sexual penetration;
- Section 3: Sexual assault – Non-consensual sexual touching;
- Section 4: Causing another to engage in sexual activity.

Understanding how the law defines and applies the requirement of non-consent is vital (SOA, ss74-76).

Sexual offences against children under 13 years (Chapter 8.6)

These offences require D to intentionally perform the sexual act, but they *do not* require V to lack consent and *do not* require D to have any mens rea as to V's possible non-consent. Rather, it is assumed that a child under 13 years is incapable of consenting to sexual conduct, and it is assumed that a reasonable person would know this. Such presumptions cannot be rebutted by D.

Sexual offences against children under 16 years (Chapter 8.7)

Where V is under 16 years, she is not capable of giving consent to sexual activity and so her 'consent' is not relevant to D's liability and nor is D's belief in that consent. However, these offences are distinct from those in Chapter 8.6 because, where V is aged between 13 and 15, D may escape liability if he reasonably believes that V is 16 years or over and reasonably believes that she consents to the sexual activity.

Status and relationship based offences (Chapter 8.8)

As with offences discussed at sections 8.6 and 8.7, V's 'consent' to the sexual activity in these offences is irrelevant. However, rather than focusing on the age of V, our focus in this section is on V's vulnerable relationship with D, stemming from D's position of trust, D and V's familial relationship, or V's mental disorder impeding choice.

Reform (Chapter 8.9)

Despite the relatively recent reform of the law in this area, several areas of debate remain topical. These include:

- Whether it is appropriate to expand the offence of rape (actus reus and mens rea) in the manner we have seen in recent years;
- How the law deals with victims who were voluntarily intoxicated at the time of the potential offence;
- The problem of growing legal complexity.

Eye on assessment (Chapter 8.10)

This section discusses how problem questions should be approached in relation to the sexual offences, and how to identify the most relevant offence to apply to problem facts.